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UNITED STATES DISTRICT COURT
EASTERN DISTRICT

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INNOVATION VENTURES, LLC, et al.,

12 Civ. 5354 (KAM-RLM)

Plaintiffs,

- against -

ULTIMATE ONE DISTRIBUTING CORP., et al.

Defendants.

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**AMENDED CROSS-CLAIMS OF DEFENDANTS FOOD DISTRIBUTORS
INTERNATIONAL, INC. AND SCOTT TILBROOK AGAINST
TRADEWAY INTERNATIONAL, INC. d/b/a BAJA EXPORTING,
JOSEPH SHAYOTA AND ADRIANA SHAYOTA**

Defendants Food Distributors International, Inc. ("FDI") and Scott Tilbrook ("Tilbrook"), by their attorneys, Goodman & Saperstein, as and for their Cross-Claims against Defendants Tradeway International, Inc. d/b/a as Baja Exporting ("Baja Exporting"), Joseph Shayota and Adriana Shayota, allege as follows:

1. That Cross-Claimant FDI is a corporation, organized and existing by virtue of the laws of the State of Florida, maintaining its principal place of business in Fort Lauderdale, Florida.
2. That Defendant Tilbrook is a resident of the state of Florida.
3. Upon information and belief, Cross-Defendant Baja Exporting is a corporation,

organized and existing by virtue of the laws of the State of California, maintaining its principal place of business in San Diego, California.

4. Upon information and belief, Cross-Defendants Joseph Shayota and Adriana Shayota are the principals of Baja Exporting and are the moving, active and conscious force behind Baja Exporting.

5. That FDI is in the business of buying, selling, marketing, trading and otherwise dealing in food and grocery items and other consumer products.

6. Upon information and belief, Baja Exporting is in the business of buying, selling, marketing, trading and otherwise dealing in grocery items and other consumer products.

7. That between September, 2012 and November, 2012, Baja Exporting offered and sold to FDI a total of 1,938 cases of allegedly Plaintiffs' 5-hour Energy product in three (3) varieties for a total of \$540,552.00, which FDI resold to Defendant Quality King Distributors, Inc. ("QK").

8. The Plaintiffs have filed a Seventh Amended Complaint ("Complaint"), in which they allege that the 5-hour Energy bottles, as set forth above, which FDI purchased from Baja Exporting and sold to QK, all bore counterfeit trademarks, that were not affixed by Plaintiffs.

9. That by reason of the foregoing, Plaintiffs have commenced this action against FDI and Tilbrook and in their Complaint, have asserted claims against them under the Lanham Act for trademark infringement, trademark counterfeiting, false description and designation of origin in commerce, false advertising, trademark dilution, copyright infringement; under New York General Business Law for dilution of mark and injury to business reputation, deceptive business practices; and under common law for unfair competition and unjust enrichment arising from its purchase, sale and distribution of the aforesaid 5-hour Energy products that FDI

purchased from Baja Exporting.

10. That in connection herewith, Plaintiffs are seeking monetary damages from FDI and Tilbrook, as well as reasonable attorney's fees and costs and disbursements.

11. That by reason of the foregoing, Plaintiffs have also sued QK and in their Complaint have asserted the same claims against QK, as they have as against FDI and Tilbrook.

12. That in its Answer to the Complaint, QK has asserted cross-claims against FDI and Tilbrook, for which QK seeks indemnification, treble damages, compensatory damages and punitive damages

13. Upon information and belief, based upon Plaintiffs' allegations, discovery and deposition testimony of other defendants and Joseph Shayota, it appears that Joseph Shayota and Adriana Shayota were participants in a counterfeiting conspiracy, knew and/or had reason to believe that the 5-hour Energy products which Baja Exporting offered and sold to FDI bore counterfeit trademarks not affixed by Plaintiffs.

**AS AND FOR A FIRST CROSS-CLAIM AGAINST
TRADEWAY INTERNATIONAL, INC. d/b/a BAJA EXPORTING,
JOSEPH SHAYOTA AND ADRIANA SHAYOTA**

14. FDI and Tilbrook repeat and reallege Paragraphs "1 to 13" as though more fully set forth herein.

15. While FDI and Tilbrook have denied Plaintiffs' claims and QK's cross-claims, FDI and Tilbrook are entitled to indemnification from Baja Exporting, Joseph Shayota and Adriana Shayota based upon:

- a. Baja Exporting's, Joseph Shayota's and Adriana Shayota's breach of the contract of sale described above;
- b. Baja Exporting's, Joseph Shayota's and Adriana Shayota's breach of implied warranties of merchantability (UCC2-314) and fitness for use (UCC2-315) and express warranty of title and against infringement

(UCC2-312) under the Uniform Commercial Code;

- c. Under the common law; and
- d. Baja Exporting's, Joseph Shayota's and Adriana Shayota's fraud and deceit in knowingly selling FDI the aforesaid counterfeit products, in that Baja Exporting, Joseph Shayota and Adriana Shayota knew or had reason to know or turned a blind eye to the fact, that the bottles were not manufactured by Plaintiffs, when they were sold to FDI.

16. The right of indemnification includes any and all damages, as well as Plaintiffs' reasonable attorney's fees and costs and disbursements which may be awarded in favor of Plaintiffs and as against FDI and Tilbrook by reason of the allegations of Plaintiffs in their Complaint, and FDI's and Tilbrook's reasonable attorney's fees and all expenses otherwise incurred by FDI and Tilbrook in connection with Plaintiffs' Complaint.

17. The right of indemnification also includes any and all damages, as well as QK's reasonable attorney's fees and costs and disbursements, which may be awarded in favor of QK and as against FDI and Tilbrook by reason of the allegations of QK in its cross-claims, and FDI and Tilbrook's reasonable attorney's fees and all expenses otherwise incurred by FDI and Tilbrook in connection with QK's cross-claims.

WHEREFORE, FDI and Tilbrook demand judgment as follows:

A. On FDI's and Tilbrook's First Cross-Claim, damages against Baja Exporting, Joseph Shayota and Adriana Shayota, jointly and severally, in an amount equal to whatever monies FDI and Tilbrook may have to pay to Plaintiffs by reason of Plaintiffs' claims against FDI and Tilbrook and FDI's and Tilbrook's reasonable attorney's fees and expenses otherwise incurred by them in connection with Plaintiffs' claims;

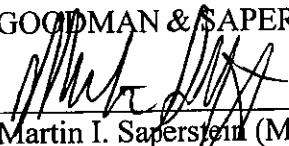
B. On FDI's and Tilbrook's First Cross-Claim, damages against Baja Exporting, Joseph Shayota and Adriana Shayota, jointly and severally, in an amount equal to whatever

monies FDI and Tilbrook may have to pay to QK by reason of QK's claims against FDI and Tilbrook and FDI's and Tilbrook's reasonable attorney's fees and expenses otherwise incurred by them in connection with QK's cross-claims; and

C. That FDI and Tilbrook have such other and further relief which as to this Court may deem just and proper.

Dated: Garden City, New York
April 26, 2013

GOODMAN & SAPERSTEIN

By: 

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Plaintiffs,

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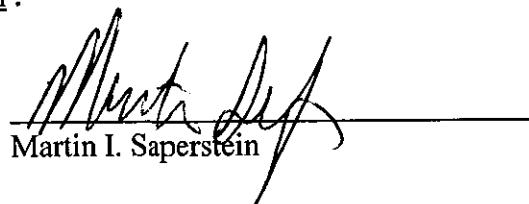
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing AMENDED CROSS-CLAIMS OF DEFENDANTS FOOD DISTRIBUTORS INTERNATIONAL, INC. AND SCOTT TILBROOK AGAINST TRADEWAY INTERNATIONAL, INC. d/b/a BAJA EXPORTING, JOSEPH SHAYOTA AND ADRIANA SHAYOTA dated April 26, 2013 has been filed electronically with the U.S. District Court this 26th day of April, 2013. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. If a party is not given notice electronically through the Court's system, a copy will be served by ordinary United States mail, first class postage prepaid; and

A copy was served this day by Electronic Transmission (E-mail) addressed as indicated below:

David M. Greeley, Esq.
James R. Thompson, Esq.
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Martin I. Saperstein